MEMORANDUM ON STATE LEASE NO. 318.

7-6-1937

I. Lease No. 318 was executed July 3rd, 1935 and it does not appear to have any definite term. According to the terms of the lease, the lessee has paid Thirty-two Thousand, Seven Hundred Fifty and 00/100 ($32,750.00) Dollars as a bonus and that payment entitles him to delay drilling operations for a period not exceeding three (3) years provided that he complies with the other particular provisions, to-wit:

At the end of one (1) year, if lessee has not commenced drilling operations, a rental shall be due in the amount of Sixteen Thousand,Three Hundred Seventy-five and 00/100 ($16,375.00) Dollars and a similar amount is due at the expiration of each two succeeding years unless drilling operations are commenced. If, however, drilling operations are commenced anywhere on this lease, the lease provides that the lessee may select 20,000 acres surrounding the first well and thereafter will not have to pay any rental on that 20,000 acres. So long as drilling operations on this 20,000 acres selected are prosecuted continuously in the sense that no more than ninety (90) days shall elapse between the cessation of operations on one well and the commencement of operations on another well, lessee may hold the entire lease by paying a reduced rental of Fifteen Thousand, Seven Hundred Seventy-five and 00/100 ($15,775.00) Dollars.

Under our interpretation of the langugage of this lease, it appears that the lessee may perpetuate the life of the lease indefinitely by carrying on drilling operations as above described and paying a reduced rental. As stated above, the lessee could not keep the lease for more than three (3) years without commencing drilling operations, but having once commenced drilling operations and carrying on such operations continuously as defined above, and paying a reduced rental there seems to be no limit as to how long the lessee may keep the lease without securing any production whatever.

II. From the information we have been able to obtain, it appears that the lessee commenced operations June 2nd, 1938, and that that well was abandoned May 13th, 1939. The lessee has complied with the provisions of the lease with respect to drilling operations as far as we are able to ascertain by prosecuting those operations continuously in the sense that not more than ninety (90) days has elapsed between the abandonment of one well and the beginning of another. Two (2) wells have been drilled on the lease, and both were abandoned as dry holes. A third well is now drilling. We have been unable to determine whether more than ninety (90) days has actually elapsed between the abandonment of one well and the beginning of another for the reason that the Conservation Commission does not have in its files a dated log. It seems that until recently they had no log at all, but now have copies of the log made by the lessee for his own use. We are advised by the Conservation Commission that forms have been sent to the lessees to be filled out and when those forms are returned, we shall be able to obtain a dated log.

III. With respect to the uncertain term of this lease, we have written to the Register of the State Land Office, with the hope of securing copies of the advertisement of bids before the lease was awarded to this lessee. We feel certain that the advertisement indicated that the lease was for a three-year (3) primary term and we feel also that it would be highly improbable for the advertisement to indicate that the lease could be indefinitely kept in effect without securing production. After we have secured the information we have requested from the Register of the State Land Office, a subsequent memorandum will be supplied with respect to any discrepancies between the provisions of the lease itself and the provisions of the advertisement.

IV. This lease was executed by Governor O. K. Allen, and is dated July 3rd, 1935. Allen executed the lease under the authority vested in him by Act 30 of the Extra Session of 1915, as amended by Act 315 of 1926. The consideration paid

to the State was Thirty-two Thousand, Seven Hundred Fifty and 00/100 ($32,750.00) Dollars. The lease was assigned to The Texas Company by W. T. Burton on July 18th, 1935, for a consideration of Seventy Thousand, Five Hundred and 00/100 ($70,500.00) Dollars and the retention of a one-twenty-fourth (1/24th) override by Burton. Although we do not have a copy of the instrument of transfer, we know that Burton transferred to the Win or Lose Corporation three-fourths (3/4ths) of the one-twenty-fourth (1/24th) override which he reserved from the transfer to The Texas Company. According to the information we have, a conspiracy was effected between Burton and James A. Noe whereby Burton was to secure this lease for Thirty-two Thousand, Seven Hundred Fifty and 00/100 ($32,750.00) Dollars, assign the lease to The Texas Company for Seventy Thousand, Five Hundred and 00/100 ($70,500.00) Dollars, and retain a one-twenty-fourth (1/24th) override. Burton assigned to the Win or Lose Corporation three-fourths (3/4ths) of the one-twenty-fourth (1/24th) override and distributed the difference between Thirty-two Thousand, Seven Hundred Fifty and 00/100 ($32,750.00) Dollars and Seventy Thousand, Five Hundred and 00/100 ($70,500.00) Dollars among the stockholders in the Win or Lose Corporation and himself. It seems that three-fourths (3/4ths) of this profit was set aside for the Win or Lose Corporation stockholders. Burton kept one-fourth. The portion set aside for the stockholders of the Win or Lose Corporation was distributed to those stockholders according to the number of shares of stock they owned in the corporation. The total amount set aside for the stockholders was Twenty-seven Thousand, Nine Hundred Thirty-seven and 50/100 ($27,937.50) Dollars. With respect to the stockholders of the Win or Lose Corporation James A. Noe received $8,560.62 for his 31 shares; Seymour Weiss received $6,705.01 for his 24 shares; O. K. Allen received $3,352.61 for his 12 shares; the Estate of Huey P. Long received $8,660.62 for its 31 shares; Earle J. Christenberry received $279.37 for his 1 share; and Alice Lee Grosjean received the same amount for her 1 share. The above information

was secured by Mr. Gensler from the records of the United States Attorney's Office for the Eastern District of Louisiana, and Mr. Gensler was advised that W. T. Burton testified before the Federal Grand Jury that the above payments were made and that it was agreed between he and James A. Noe that those payments would be made. The difficulty we have encountered in this connection is that Burton insists that although Allen received the amount above stipulated, the said Allen was not in on the conspiracy and did not know that he was going to get anything at the time he executed the lease. If we could show that Allen was also a member of this conspiracy, we feel certain that this lease could be set aside as having been obtained by fraudulent means, but unless we can show that, the possibility of success along this course is remote. It seems likely, also, that The Texas Company was in some way a party to the entire transaction, in view of the fact that The Texas Company paid almost twice the original consideration to obtain this lease fifteen (15) days after it was let to Burton. There is nothing in our file and we have been able to secure nothing that tends to explain why The Texas Company, if it was willing to pay $70,500.00 for this lease, did not bid on the lease, in the first place, because it is obvious that they could have secured this lease for considerably less than $70,500.00. Even if we are not able to show that Allen was aware at the time of the letting of the lease of the conspiracy, we nevertheless feel that the lease could be set aside if we could show that The Texas Company was in any way a party to the plan, i. e., were induced not to bid on the lease and assured that they would in some way be rewarded for not doing so. According to Burton's testimony, he made all of the payments to the stockholders of the Win or Lose Corporation by Cashier's Check. He also testified that Allen requested that his portion be given to him in cash, but that he, Burton, refused to make the payment in that manner, and that Allen did receive a Cashier's Check.

V. According to the provisions of the lease, after the lessee commenced drilling operations he was entitled to select 20,000 acres around the first well on which no delay rental

would be due so long as he prosecuted drilling operations in the manner heretofore described. In attempting to comply with this provision and exercising his right of selection, the lessee wrote the Governor, the Register of the State Land Office and the Mineral Board under date of August 9th, 1939, advising that he had commenced operations and designated a certain tract of land as being the tract which he was selecting under the terms of the lease. A plat was attached showing approximately where these lands lie. It seems that the lands selected by the lessee contained approximately 19,540 acres and the tract is very irregular in shape. We do not feel that the lease contemplates the selection of a tract so irregular, but on the other hand, probably contemplates a selection of a tract either in the shape of a square or a circle. The tract selected is so irregular that it could not be classified as either, but suggests that the selected lands were selected because they more nearly coincided with the geophysical data in the lessee's possession. At any rate, we doubt the lessee's right to select a tract so irregular in shape.

VI. The rental to be paid by the lessee under the terms of this lease were due on or before July 3rd, of each year in which he was entitled or required to make a rental payment. It appears that the lessee made his rental payments on or before the date due in all instances except the year 1937 when the rental due July 3rd, 1937 was not paid until July 6th, 1937. However, the Register of the State Land Office accepted this payment even though made three days late and the question now arises as to whether by so accepting this late payment, the Register of the State Land Office has caused the State to be estopped. There are two recent cases decided by the Supreme Court of the State of Louisiana in which it was held that the Register of the State Land Office by accepting rentals has estopped the State. One is State ex rel Shell Petroleum Company vs. Register of the State Land Office, 193 La. 883, 192 So. 519, and the other is Reeves vs. Leche, Governor, re-

ported in 194 La. 1070, 195 So. 542. Both of these cases were decided by the Court on pleas of estoppel, and both involved the question of bids having been erroneously advertised. It seems that in both cases an error was made in the day on which the bids were to be received. In both cases rentals were accepted at least twice before the State brought a suit to set the lease aside for the errors in advertising. We think neither case is decisive of the issue here for several reasons:

It is indicated by the language of the Court in both cases that the State's position was weakened by the fact that the State did not allege and did not prove that more advantageous contracts could have been secured if the errors in advertisement had not been made and that it was not shown that any person was misled by the error to the extent that a bid was not offered or that one would have been offered by any person if the error had not bee made. In other words, the State could not show any actual injury as a result of the defect in advertising and we think it is clear from both of the cases that the Court took the position that the contract was not void but at most only voidable. Our case is different from these two in the writer's opinion, in that in our case the lease expired under its own terms on July 3rd, 1937. The Register of the State Land Office has no authority to extend leases or to enter into lease contracts on behalf of the State for the reason that that power was expressly vested in the State Mineral Board by the Legislature of 1936. We, therefore, believe that the Register of the State Land Office performed an act which she had no authority whatsoever to perform in accepting these rentals after the lease had expired, and we are inclined to the view that this is the strongest point on which we could base a suit to set the lease aside. If such a suit is filed, it will be necessary to tender to the lessee the total amount of money he has paid in rental since July 3rd, 1937.

#7.

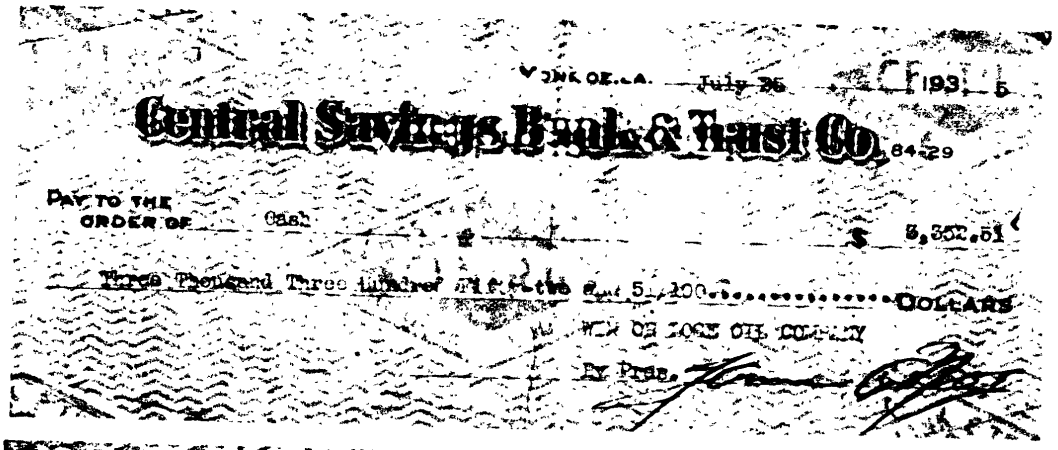
It will also be necessary to make demand on the lessee to give us a cancellation of the lease within ten days after demand is made.

We think this position is strengthened by two things, first, Act 168 of 1920 and shown in Dart's Statutes at Section 4729 which reads as follows:

> "Whenever, by reason of the termination of the full period within which an optional oil and gas lease may be kept alive by the payment of rentals, or at the termination of any of the options in such lease by reason of failure on the part of the lessee to comply with the condition therein for the prevention of forfeiture, <u>such lease shall lapse</u> * * *."

We think our position is further strengthened by the fact that the Mineral Board as of July 6th, 1937 was vested with full authority to supervise all State leases. We are confident that the Register of the State Land Office was totally without authority to accept this late rental.

C. C. Wood.



Central Savings Bank & Trust Co. 84-29

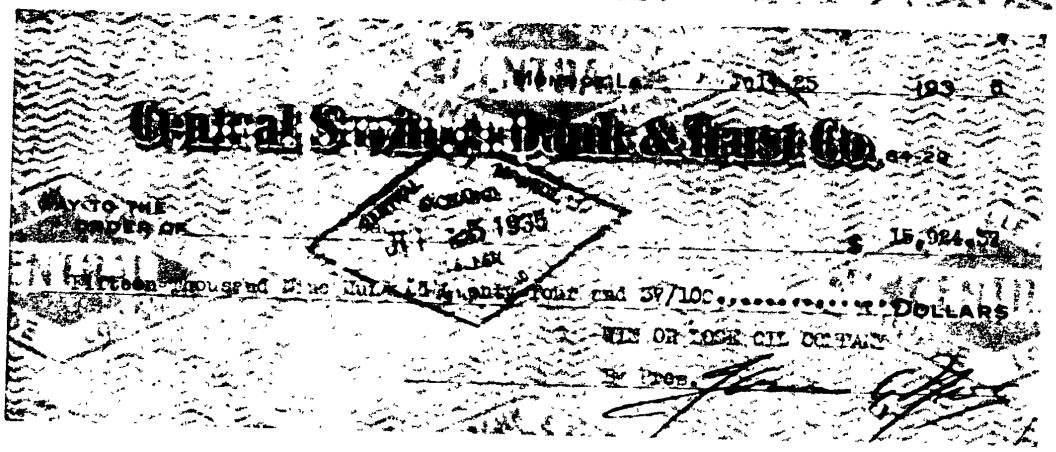
July 26 193 5

PAY TO THE ORDER OF Cash $ 3,352.61

Three Thousand Three Hundred fifty-two and 61/100 DOLLARS

FOR DEPOSIT ONLY

By Pres.



Central Savings Bank & Trust Co. 84-29

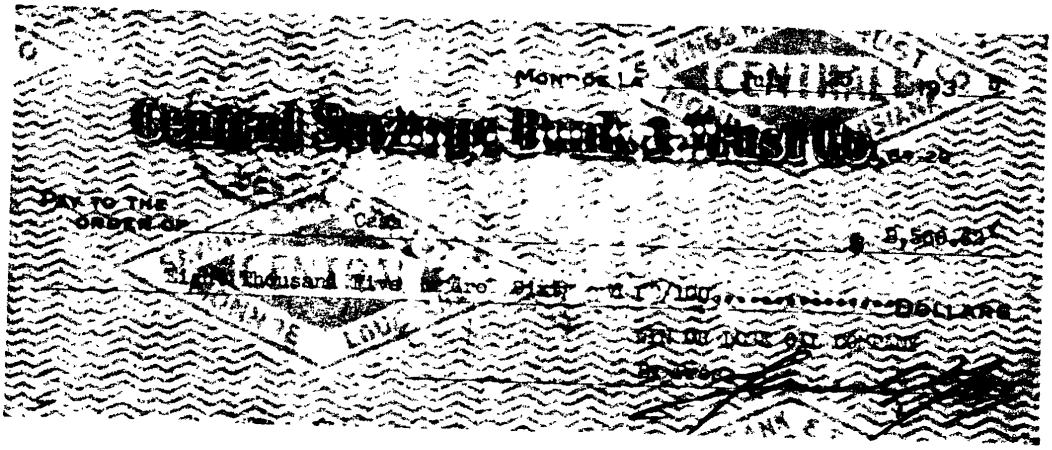
July 25 193 5

PAY TO THE ORDER OF $ 15,924.72

Fifteen Thousand Nine Hundred Twenty-four and 72/100 DOLLARS

FOR DEPOSIT ONLY

By Pres.



Central Savings Bank & Trust Co. 84-29

PAY TO THE ORDER OF Cash $ 8,506.33

Eight Thousand Five Hundred Six and 33/100 DOLLARS

FOR DEPOSIT ONLY

By